IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6136 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGAN @ TAKLO RANCHHOD VASAVA

Versus

STATE OF GUJARAT

Appearance:

MR ASHISH M DAGLI for Petitioner

MR DN PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. The petitioner - detenue has filed this petition through jail as he was detained under the provisions contained in the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as `the PASA Act'], by an order dated 2/6/1999 made by Police

Commissioner, Baroda. The grounds of detention served on the detenue dated 2/6/1999 clearly reveal that he was convicted in three different trials for offences punishable under sections 457, 380, 114 IPC and 461, 379, 114 IPC and 379, 114 IPC. First Information Reports, attributing role played by detenue are pending at stage of investigation, which are 4 in number. From the grounds of detention, it appears that he is indulging in theft of valuable articles such as ornaments, tape recorder, motorbike, audio cassettes, camera etc. The grounds of detention also disclose that detenue is in habit of committing offence of theft in the areas known as Bajva, Varasiya and Chhani of Baroda city. From the grounds of detention, it clearly appears that the authority was satisfied that the detenue is required to be detained. Some statements were recorded which have been verified by the appropriate authority. The impression is created that the detenue will go to the extent of using dangerous weapons if someone would refuse to carry out his orders. The detaining authority has also filed an affidavit pointing out that the order of detention is based on the material collected and considered. It is submitted by the detaining authority that no interference is required in this matter.

2. Registry of this Court assigned the matter to learned advocate Mr. A.M. Dagali. He has also made representation on behalf of the detenue. His main contention in this matter is that there is gross delay in passing the order of detention. He submitted that the last incident took place on 26/3/1999, which is clear from the grounds of detention. He is in judicial custody since long. The order of detention is made on 2/6/1999.

3. There may be proper explanation by the detaining authority for passing the order of detention at a later stage. The explanation should come from the detaining authority as to why there was a delay in passing the impugned order. In case of Pradeep Nilkanth Paturkar v/s S. Ramamurthi and others [AIR 1994 SC 656], the Apex Court has pointed out in para 6 that the explanation should come from the authority and that the explanation should not be accepted to the prejudice to the rights of the detenue. The Apex Court considered the submission that the unexplained and undue delay in passing the order vitiates the order of detention. The Court considered the decision reported in case of T.A. Abdul Rahman v/s State of Kerala [AIR 1990 SC 225], wherein at page 225, the Court has observed as under :-

"The question whether the prejudicial activities

> of a person necessitating to pass an order of detention is proximate to the time when the order is made or the live-link between the prejudicial activities and the purpose of detention is snapped depends on the facts and circumstances of each case. No hard and fast rule can be precisely formulated that would be applicable under all circumstances and no exhaustive guidelines can be laid down in that behalf. It follows that the test of proximity is not a rigid or mechanical test by merely counting number of months between the offending acts and the order of detention. However, when there is undue and long delay between the prejudicial activities and the passing of detention order, the Court has to scrutinise whether the detaining authority satisfactorily examined such a delay and afforded a tenable and reasonable explanation as to why such a delay has occasioned, when called upon to answer and further the Court has to investigate whether the casual connection has been broken in the circumstances of each case."

4. As pointed out by the Apex Court that the delay ipso facto in passing the order of detention after an incident is not fatal to the detention of a person, for, in certain cases, delay may be unavoidable and reasonable. The Apex Court further pointed out that, "What is required by law is that the delay must be satisfactorily explained by the detaining authority."

5. Mr. Patel, learned AGP appearing for the State could not point out good reason for delay and hence, the order of detention is required to be held as bad.

6. This Special Civil Application is accordingly allowed. The impugned order of detention is hereby quashed and set aside. The detenue is ordered to be released forthwith, if he is not required in any other case. Rule is made accordingly absolute with no orders as to costs.

*****

parmar*